ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO: GA/1/2O24
APOT/261/2024
WITH
CS/168/2024

SHUSHRI MAMATA BANERJEE.
VS
DR. C.V. ANANDA BOSE & ORS.

-And-

IA NO: GA/1/2O24
APOT/263/2024
WITH
CS/168/2024

SHRI KUNAL KUMAR GHOSH.
VS
DR. C.V. ANANDA BOSE & ORS.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 26th July, 2024

Mr. S.N. Mookherjee, Sr. Adv.
with Mr. Anirban Ray,G.P.,
Mr. Sanjay Basu,
Mr. Rajarshi Dutta,
Mr. Piyush Agarwal &
Ms. S. Kajaria, Advs.
..for appellant in APOT/261/2024.

Mr. Ahin Chowdhury &
Mr. Dhrubo Ghosh, Sr. Advs.
with Mr Debjyoti Das,
Mr. Ayan Chakrabarty &
Ms. Sohini Mukherjee, Advs.
..for appellant in APOT/263/2024.

Mr. Dhiraj Trivedi with
Mr. Shailendra Mishra,
Mr. Rajdeep Majumdar,
Mr. Moyukh Mukherjee
Mr. Navneet Misra,
Mr. Arijit Majumdar,
Mr. Manabendra Nath Bandyopadhyay &
Mr. Sunil Gupta, Advs.
...for respondent no.1.

Mr. Kishor Datta, A.G. with
Mr. Amit Kr. Nag, Adv.
...for respondent no.2.

Mr. Jayanta Mitra, Sr. Adv. with
Mr. Amit Kr. Nag, Adv.
...for respondent no.3.

Order in terms of prayer (a) of the stay petition.

We admit the appeal. As the point involved is very short, we propose to dispose of it, dispensing with all formalities.

The Hon'ble Chief Minister of the state and another, Sri Kunal Kumar Ghosh have preferred these appeals being aggrieved by the judgement and order dated 15th July, 2024 made by a learned single judge of this court in a defamation suit filed by his Excellency the Governor of the state.

The material part of the order by which the appellants are aggrieved is paragraph 42 of the judgement which is set out hereinbelow :

> "42. In view of the above, the defendants are restrained from making any defamatory or incorrect statement against the plaintiff by way of publication and on social platforms till 14th August, 2024."

This action is founded on the following spoken or written words which have been quoted in paragraph 27 of the impugned judgement and order and inserted by us hereinbelow :

(Chief Minister)

"INDIAN EXPRESS

DATED 28-06-2024 Page 1 and 2

"Why must everyone go to Raj Bhavan? The Governor can authorise the Speaker or Deputy Speaker, or to attend the Assembly himself. Women have informed me that they are not feeling safe to visit Raj Bhavan due to recent incidents there/ reported there," she added."

THE TIMES OF INDIA

Date: 28-06-2024 Page: 6

"....CM Mamata Banerjee on Thursday took aim at Bengal governor CV Ananda Bose, saying "women don't feel safe to go to Raj Bhavan".

"....The CM said: "The governor is not allowing MLAs to take oath and has kept them waiting. He did not authorise the speaker or the deputy speaker to administer the oath. Why should the MLAs go to Raj Bhavan?" She added that the legislators haven't been able to start working due to the delay in swearing-in.

"...The CM said that keeping in mind the incident at Raj Bhava, women didn't feel safe to go there.....

THE HINDU

Date: 28-06-2024 Page: 1

"...Amid the row over the venue for the swearing-in of two Trinamool Congress MLAs-elect, West Bengal Chief Minister Mamata Banerjee on Thursday said women "are not feeling safe" in Raj Bhavan and Governor C.V. Ananda Bose has no right to delay the oath-taking of her party's legislators"

.....Why must everyone go to Raj Bhavan? The Governor can authorise the Speaker or Deputy Speaker, or to attend the Assembly himself. Women have informed me that they are not feeling safe to visit Raj Bhavan due to recent incidents here, she said."

The Chief Minister was alluding to the case of harassment levelled against the Governor by a woman staff at Raj Bhavan in May...."

"... Cannot deny right'

Breaking her silence on the issue that has been festering for the past several weeks, the Chief Minister said, "Nearly a month has passed but my MLAs are unable to take oath. The Governor is obstructing them from doing so. It is the

people who have elected them, not the Governor. He cannot deny them the right to take oath".

The Chief Minister and the Ministers of the State government have not visited Raj Bhavan since May 2…"

INDIAN EXPRESS

DATED 28-06-2024 Page 1 and 2

"She was scared to go to Raj Bhavan to take oath as public representative in backdrop of molestation allegations against the Governor by a woman of Raj Bhavan staff member"

KHABAR 365 DIN (Mr. Kunal Ghosh)

Date: 29-06-2024 Page: 3

Edike sapathe jatilata ta iriniye Trinamuler Mukhapatra Kunal Ghosh Rajyapal K deadline bendhe diechen. Tini edin janiyechen Rajyapal jadi ei dui natun bidhayak k hanastha kara na bandha Karen tahale Dilli Taj Palace Hotel er aprakasita adhayay samne asbe. Tini aro janiyechen Sombar dupur tinter madhye Rajyapal Sapath na graham korle tabey tini ei padakhhep neben. Ullekhya oi hotelai thake jauna nirjaton korechen Rajyapal bole etimadhya ek nritya shilpi avijog korechen Pulice a….."

Although by these words there is no direct reference to or to any act by the Hon'ble Governor, by implication or innuendo, the following defamatory statements have been alleged to have been made or were understood by reasonable persons to have been made against him.

"a) The Petitioner is not a virtuous person and that the women feel unsafe to go to the Governor's House.

b) The Petitioner is intentionally procrastinating for administering oath to the Respondent nos. 2 and 3 herein due to alleged political rivalry.

c) The Petitioner has been embroiled in a criminal case after a complaint has been lodged by a female staff of the Governor's House and thus, the Petitioner's character is questionable.

d) The Petitioner has been obstructing the course of administration of public duties by not allowing the Respondent Nos. 2 and 3 to take oath as Members of Legislative Assembly.

e) The Petitioner has done some mischievous act at Taj Palace, Delhi, questioning the moral turpitude of the Petitioner, as alleged by the Respondent no.4 herein."

Mr. Dhiraj Trivedi, learned advocate appearing for the Hon'ble Governor, submitted that his client's reputation had been tarnished. He cited the following authorities :

1. *John Thomas vs. Dr. K. Jagadeesan (2001) 6 SCC 30,*
2. *Mr. Arun Jaitley vs. Arvind Kejriwal (2016) SCC Online Del 795,*
3. *Subraamanian Swamy vs. Union of India (2016) 7 SCC 221,*
4. *Venai Kumar Saxena vs. Aam Admi Party & Ors. (2022) SCC Online Del 3093,*
5. *Soumendra Kumar Biswas vs. Sheshadri Goswami & Ors. Unreported : FMAT/72/2023, CAN/1/2023,*
6. *Arvind Kejriwal vs. State & Anr. (2024) SCC Online Del 719.*

Before proceeding further with this judgement, we propose to observe as follows :

A man's reputation is sacrosanct to him. The law gives him the right to protect this reputation. An important part of this reputation is his moral character. Freedom of speech and expression is conferred on every

citizen of India, as a fundamental right by Article 19 of the Constitution of India. This right cannot be throttled or gagged. Of course, this freedom of expression is subject to reasonable restrictions. One of the restrictions which is applicable in this case is the restriction that apply to words, spoken or written which tend to defame others.

Every member of the public has the right to know the truth and if the truth is in the public interest, a member of the public has every right to expose it. If this right is vested in every citizen, such right is vested with more responsibility in the Chief Minister. But expression of this freedom is subject to certain conditions under the law of defamation. The first is that it should stand the test of justification or truth or must be a fair comment or the maker of the statement must owe a duty to the persons to whom the defamatory statement was published, which is described as qualified privilege. If the maker fails the test he is liable to pay damages in the civil action and may be charged with commission of an offence. This is entrenched in our law and more firmly recognised and pronounced by the Supreme Court in Bloomberg Television Production Services (P) Ltd. Vs. Zee Entertainment Enterprises Ltd. reported in 2024 SCC Online 426.

The impugned order restrains the appellants "from making any defamatory or incorrect statement against the respondent by way of publication and in social platform till 14th August, 2024."

Mr. S.N. Mookherjee, learned senior advocate appearing for one of the appellants, the Hon'ble the Chief Minister, Mr. Ahin Chowdhury, learned senior advocate with Mr. Dhruba Ghosh, learned senior advocate appearing for the other and Mr. Jayanta Kumar Mitra, learned senior advocate appearing for one of the respondents have very correctly stated that the statements referred to in the body of the judgement have not even prima facie been declared to be defamatory of his Excellency or incorrect. In the absence of such declaration what is the defamatory statement referred to in the impugned order which is being restrained from being published in

future is not known. This order applies to statements being made by the appellants in future.

In those circumstances, we only clarify or modify the said order by saying that the appellants will be free to make any statement concerning his Excellency the Governor not crossing the contours of freedom of speech and expression and public duty as described above. Otherwise, the appellants run the risk of being exposed to a claim for heavy damages and other retaliatory actions.

The impugned judgement and order is clarified and modified as above.

The learned single judge is to consider the interim application and determine it after filing of affidavits.

All points are kept open.

The learned single judge shall not be influenced by his observations in the impugned judgement.

The points raised by Mr. S.N. Mookherjee regarding non joinder of the media as party, which was a necessary party according to him, is kept open.

The grounds urged by Mr. Ghosh under Order VII Rule 11 of the Civil Procedure Code are also kept open.

With the above observations and directions, both the appeals (APOT/261/2024 & APOT/263/2024) and the connected applications (IA NO: GA/1/2024 & IA NO: GA/1/2024 respectively) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

K. Banerjee
A.R.C.R.